

**BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW
COMMISSION**

C&D INVESTMENTS, LLC
APPELLANT,

CASE NO: 23C 0895

V.

DECISION AND ORDER
AFFIRMING THE DECISION
OF THE LANCASTER
COUNTY BOARD OF
EQUALIZATION

LANCASTER COUNTY
BOARD OF EQUALIZATION,
APPELLEE.

I. BACKGROUND

1. The Subject Property is an improved commercial parcel in Lancaster County, parcel number 10-26-232-014-002.
2. The Lancaster County Assessor (the County Assessor) assessed the Subject Property at \$953,600 for tax year 2023.
3. C&D Investments, LLC (the Taxpayer) protested this value to the Lancaster County Board of Equalization (the County Board).
4. The County Board determined that the taxable value of the Subject Property was \$953,600 for tax year 2023.
5. The Taxpayer appealed the determination of the County Board to the Tax Equalization and Review Commission (the Commission).
6. A Single Commissioner hearing was held on September 18, 2024, at the Tax Equalization and Review Commission Hearing Room, Nebraska State Office Building, Lincoln, Nebraska, before Commissioner James D. Kuhn.
7. Chad Bowman was present at the hearing for the Taxpayer.
8. Jacob Van Pelt (the Appraiser) was present for the County Board.

II. APPLICABLE LAW

9. All real property in Nebraska subject to taxation shall be assessed as of the effective date of January 1.¹
10. The Commission's review of a determination of the County Board of Equalization is de novo.²
11. When the Commission considers an appeal of a decision of a county board of equalization, there are two burdens of proof.³ The first involves a presumption that the board of equalization has faithfully performed its official duties in making an assessment and has acted upon sufficient competent evidence to justify its action.⁴ That presumption remains until there is competent evidence to the contrary presented, and the presumption disappears when there is competent evidence adduced on appeal to the contrary.⁵
12. The second burden of proof requires that from that point forward, the reasonableness of the valuation fixed by the board of equalization becomes one of fact based upon all the evidence presented. The burden of showing such valuation to be unreasonable rests upon the taxpayer on appeal from the action of the board."⁶
13. The order, decision, determination or action appealed from shall be affirmed unless evidence is adduced establishing that the

¹ Neb. Rev. Stat. § 77-1301(1) (Cum. Supp. 2022).

² See Neb. Rev. Stat. § 77-5016(8) (Reissue 2018), *Brenner v. Banner Cnty. Bd. of Equal.*, 276 Neb. 275, 286, 753 N.W.2d 802, 813 (2008). "When an appeal is conducted as a 'trial de novo,' as opposed to a 'trial de novo on the record,' it means literally a new hearing and not merely new findings of fact based upon a previous record. A trial de novo is conducted as though the earlier trial had not been held in the first place, and evidence is taken anew as such evidence is available at the time of the trial on appeal." *Koch v. Cedar Cnty. Freeholder Bd.*, 276 Neb. 1009, 1019, 759 N.W.2d 464, 473 (2009).

³ *Pinnacle Enters., Inc. v. Sarpy Cty. Bd. of Equalization*, 320 Neb. 303, 309, ___ N.W.3d ___ (2025). See also *Brenner*, 276 Neb. at 283, 753 N.W.2d at 811 (quoting *Ideal Basic Indus. v. Nuckolls Cty. Bd. of Equal.*, 231 Neb. 653, 654-55, 437 N.W.2d 501, 502 (1989)).

⁴ *Pinnacle Enters.*, 320 Neb. at 309, ___ N.W.3d at ___ (quoting *Cain v. Custer Cty. Bd. of Equal.*, 315 Neb. 809, 818, 1 N.W.3d 512, 521 (2024)). See also *Brenner*, 276 Neb. at 283, 753 N.W.2d at 811 (quoting *Ideal Basic Indus.*, 231 Neb. at 654-55, 437 N.W.2d at 502).

⁵ *Pinnacle Enters.*, 320 Neb. at 309, ___ N.W.3d at ___.

⁶ *Id.* See also *Brenner*, 276 Neb. at 283-84, 753 N.W.2d at 811.

order, decision, determination, or action was unreasonable or arbitrary.⁷

14. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁸
15. A Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.⁹
16. The Commission's Decision and Order shall include findings of fact and conclusions of law.¹⁰

III. FINDINGS OF FACT & CONCLUSIONS OF LAW

17. The Taxpayer purchased the Subject Property in 2012 for \$860,000. The Subject Property is a multi-story commercial property with separate tenants on each floor.
18. The Taxpayer stated lease rates have decreased in the past few years due to there being lots of office space available in the area. The Taxpayer stated maintenance issues such as needing new windows would be a large cost, thus decreasing the value of the Subject Property.
19. The Taxpayer stated they currently lease space at \$12 per square foot on a fifteen-year, triple-net lease. The Taxpayer provided operating expenses and income for 2021, 2022, & 2023. The Taxpayer calculated an income approach that was lower than the current assessment.
20. The Appraiser stated the Assessor's office uses mass appraisal and uses market data to value property. The Appraiser states

⁷ Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

⁸ *Omaha Country Club v. Douglas Cnty. Bd. of Equal.*, 11 Neb. App. 171, 174-75, 645 N.W.2d 821, 826 (2002).

⁹ Cf. *Josten-Wilbert Vault Co. v. Bd. of Equal. for Buffalo Cnty.*, 179 Neb. 415, 418, 138 N.W.2d 641, 643 (1965) (determination of actual value) *abrogated on other grounds by Potts v. Bd. of Equalization*, 213 Neb. 37, 328 N.W.2d 175 (1982)); *Lincoln Tel. and Tel. Co. v. Cnty. Bd. of Equal. of York Cnty.*, 209 Neb. 465, 468, 308 N.W.2d 515, 518 (1981) (determination of equalized taxable value).

¹⁰ Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

the income approach was used to value the Subject Property, using market data or what is typical in the market. This method of valuation equalizes similar properties with similar market conditions.

21. The Appraiser contends that the lease has add-ons that would bring the price per square foot up to \$22 to \$23 per square foot whereas the income approach used by the Appraiser is \$18 per square foot.
22. If a taxpayer's property is assessed in excess of the value at which others are taxed, then the taxpayer has a right to relief.¹¹ However, the burden is on the taxpayer to show by clear and convincing evidence that the valuation placed upon the taxpayer's property when compared with valuation placed on other similar property is grossly excessive.¹² This burden requires evidence of the assessed and market value for both the Subject Property and a comparable property.¹³
23. The Taxpayer has not produced competent evidence that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions.
24. The Taxpayer has not adduced clear and convincing evidence that the determination of the County Board is arbitrary or unreasonable and the decision of the County Board should be affirmed.

IV. ORDER

IT IS ORDERED THAT:

¹¹ *Zabawa v. Douglas Cty. Bd. of Equalization*, 17 Neb. App. 221, 757 N.W.2d 522 (2008) (citing *Cabela's, Inc. v. Cheyenne Cty. Bd. of Equal.*, 8 Neb. App. 582, 597 N.W.2d 623 (1999)).

¹² *Id.*, 17 Neb. App. at 225, 757 N.W.2d at 526 (quoting *Brenner*, 276 Neb. at 284, 753 N.W.2d at 812).

¹³ Cf. *Josten-Wilbert Vault Co. v. Bd. of Equal. for Buffalo Cnty.*, 179 Neb. 415, 418, 138 N.W.2d 641, 643 (1965) (determination of actual value) *abrogated on other grounds by Potts v. Bd. of Equalization*, 213 Neb. 37, 328 N.W.2d 175 (1982)); *Lincoln Tel. and Tel. Co. v. Cnty. Bd. of Equal. of York Cnty.*, 209 Neb. 465, 468, 308 N.W.2d 515, 518 (1981) (determination of equalized taxable value).

1. The decision of the County Board of Equalization determining the taxable value of the Subject Property for tax year 2023 is affirmed.
2. The taxable value of the Subject Property for tax year 2023 is:

Land	\$146,400
<u>Improvements</u>	<u>\$807,200</u>
Total	\$953,600

3. This Decision and Order, if no further action is taken, shall be certified to the Lancaster County Treasurer and the Lancaster County Assessor, pursuant to Neb. Rev. Stat. § 77-5018 (Reissue 2018).
4. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
5. Each party is to bear its own costs in this proceeding.
6. This Decision and Order shall only be applicable to tax year 2023.
7. This Decision and Order is effective on December 5, 2025.

Signed and Sealed: December 5, 2025



James D. Kuhn, Commissioner